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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 72-1196
FORTNEY H. STARK, JR., et al., *Appellants,*

VS.

GEORGE P. SHULTZ, et al., *Appellees.*

No. 72-985
CALIFORNIA BANKERS ASSOCIATION, *Appellant,*

VS.

GEORGE P. SHULTZ, et al., *Appellees.*

No. 72-1073
GEORGE P. SHULTZ, et al., *Appellants,*

VS.

CALIFORNIA BANKERS ASSOCIATION, FORTNEY H. STARK, JR., et al., *Appellees.*

On Consolidated Appeals from the United States District Court for the Northern District of California

BRIEF OF APPELLANTS
FORTNEY H. STARK, JR., ET AL.,
(No. 72-1196)

OPINION BELOW

The opinion of the Court below is reported at 347 F.Supp. 1242, and is set forth in the Appendix at pp. 75-93.

JURISDICTION

This is an action to enjoin the enforcement of an Act of Congress—the Bank Secrecy Act—because it is unconstitutional. On October 18, 1972, a three-judge District Court convened pursuant to 28 U.S.C. §2282 granted a preliminary injunction restraining the enforcement of portions of the Act and Regulations, and denied injunctive relief as to other portions of the Act and Regulations. Appellants[1] filed a timely notice of appeal in the District Court on November 17, 1972. By orders of Mr. Justice Douglas, appellants' time to docket this appeal was extended to March 2, 1973; the appeal was docketed within that time. Probable jurisdiction was noted on October 9, 1973, and related ap-

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[1]Appellants, the original plaintiffs in the District Court, are: Security National Bank; Fortney H. Stark, Jr.; Charles C. Marson; The American Civil Liberties Union of Northern California, Inc.; Fred Lieberman; Edward C. Harwood; Carl Bruer; and Edward Durell. They are, respectively, a national bank; its president, depositor, and customer; a bank customer; a controversial membership organization; and private citizens with financial interests abroad. Appellees (defendants below) are those charged with enforcement of the Act and Regulations: George P. Shultz, Secretary of the Treasury; William B. Camp, Comptroller of the Currency; Myles J. Ambrose, Commissioner of Customs; Johnnie M. Walters, Commissioner of the Internal Revenue Service; Herman Nickerson, Jr., Administrator of the National Credit Union; the Board of Governors of the Federal Reserve System; the Federal Home Loan Bank Board; the Federal Deposit Insurance Corporation; and the Securities and Exchange Commission.

peals consolidated.[2] This Court has jurisdiction under 28 U.S.C. §§1252 and 1253.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

Constitution of the United States, First Amendment:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Constitution of the United States, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the United States, Fifth Amendment:

> . . . [N]or shall any person . . . be compelled in any criminal case to be a witness against himself, nor be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

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[2]This appeal is one of three from the same order. The government has appealed from the partial grant of injunctive relief in *Shultz, et al. v. The California Bankers Association,* No. 72-1073, O.T. 1972. The plaintiff in a case filed after this one and consolidated with it has appealed from the partial denial of injunctive relief in *The California Bankers Association v. Shultz, et al.,* No. 72-985, O.T. 1972.

The Bank Secrecy Act, Public Law 91-508, 84 Stat. 1114, 12 U.S.C. §§1829b, 1951-59, and 31 U.S.C. §§1051-1122, and the Regulations promulgated thereunder, 31 C.F.R. §103 (1972), are set forth in Appendices A and B to this brief.

QUESTIONS PRESENTED

1. Does the government violate the Fourth Amendment by forcing banks, financial institutions, and private citizens to report the details of entire categories of transactions in the absence of any warrant and any probable cause or other standard of materiality or relevancy, for the primary purpose of obtaining evidence of crime?

2. Does the government violate the Fourth Amendment by coercing banks to make and keep records unwanted and unneeded by them, irrelevant to their regulation, and which they would not otherwise make or keep, in order to create and preserve evidence for future criminal prosecutions?

3. Do the combined protections of the Fourth and Fifth Amendments prevent the government from forcing its citizens to create, retain, and supply documents expected to incriminate themselves and each other?

4. Does the First Amendment protect a controversial membership organization and its members from the forced making and retention by its bank of a list of its members and contributors, available to both legal and extralegal access?

STATEMENT OF THE CASE

The Bank Secrecy Act was enacted in 1970 for the primary purpose of creating, locating, preserving and collecting evidence of crimes. See discussion of legislative history, *infra*, pp. 19-27. The Act and its accompanying Regulations, 31 C.F.R. Part 103 (1972), force banks, other financial institutions and private individuals to make reports of financial transactions they would not otherwise make and to make and keep records of financial transactions which they would not otherwise make or keep. The scale of the reporting and recordkeeping demanded by the Act and Regulations is wholly unprecedented in American financial life and in American law.

The Reporting Requirements

The reporting requirements of the Act span Sections 1051 through 1122 of Title 31 of the United States Code. Section 1051 declares that the Congressional purpose is "to require certain reports . . . where such reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." To that end the Act arms the Secretary of the Treasury (the "Secretary") with an enormous arsenal of discretionary power—power to issue regulations "as he may deem appropriate to carry out the purposes" of the Act's reporting requirements (§1053); power to define the domestic financial transactions to be reported (§1081); power to define most of the important terms used in the Act (§§1052(c), (e)(21), (l)); power to require "procedures as he may deem appropriate to assure compliance" (§1054);

power to exempt any parties, transactions, or classes of parties or transactions from the Act (§1055); power to seek injunctions (§1057); power to assess and collect civil penalties (§§1056, 1103); power to remit forfeitures and civil penalties (§1104); and power to seek and execute search warrants in order to intercept the international transportation of illegally unreported cash or monetary instruments (§1105).

The Act does not specify the nature of domestic financial transactions to be reported; it simply requires reports to the Secretary "at such time, in such manner, and in such detail" as the Secretary may by regulation specify. This authority extends to any transaction which involves a domestic or foreign financial institution[3] and currency or monetary instruments. 31 U.S.C. §1081.

By regulations effective July 1, 1972, the Secretary established two domestic reporting requirements. First, he required routine reports of any transaction of more than $10,000 in currency from each financial institution involved, 31 C.F.R. §103.22[4] The

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[3]The Act defines the term "financial institution" to include everything from banks to jewelers, pawnbrokers, and travel agencies, and for good measure permits the Secretary to include in the definition any one he thinks performs "similar, related, or substitute functions . . ." 31 U.S.C. §1052(e).

[4]This requirement is subject to certain exceptions, the most important of which is that financial institutions need not report such transactions "with an established customer" where the bank thinks the amount "commensurate with the customary conduct of the business, industry or profession of the customer concerned." If the Secretary wants a report on any transaction not reported because of this exception, he may have it "upon demand."

Act requires the signature on the report of at least one principal party to the transaction, 31 U.S.C. §1082.

Second, the Secretary empowered himself, in a most remarkable regulation, to expand or contract the first requirement—as well as any other—immediately, at his whim, without notice, warning, or judicial or administrative supervision. 31 C.F.R. §103.45 empowered the Secretary "in his sole discretion" and "by written order or authorization . . . [to] impose additional . . . reporting requirements authorized by statute, or otherwise modify, the requirements" of any of the Regulations.[5]

The domestic reporting requirements, then, embraced currency transactions exceeding $10,000, and whatever other transactions the Secretary ordered reported.

The Act itself requires reporting of the details of two types of foreign financial transactions and relationships. 31 U.S.C. §1101 requires reports, by anyone

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[5]This Regulation provided in full:

§103.45 *Exceptions, Exemptions, Modifications and Reports*

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to, grant exemptions from, impose additional recordkeeping or reporting requirements authorized by statute, or otherwise modify, the requirements of this part. Such exceptions, exemptions, requirements or modifications may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order or authorization, and they shall be revocable to the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

This Regulation was slightly amended after these appeals were taken.

connected with the transaction, of the transportation into or out of the country of monetary instruments exceeding $5,000 on any one occasion. See also 31 C.F.R. §103.23. Second, 31 U.S.C. §1121 requires parties to any transaction or relationship with a "foreign financial agency" to make such reports or make and keep such records as the Secretary may require. The Secretary requires reports on yearly tax returns of any "financial interest in, or other authority over, a bank, securities or other financial account in a foreign country." 31 C.F.R. §103.24.

The Act and Regulations buttress these reporting requirements by substantial civil penalties (31 U.S.C. §§1056, 1102-03; 31 C.F.R. §103.47-48) and severe criminal penalties (31 U.S.C. §§1058-59; 31 C.F.R. §103.49). In obvious anticipation of the use of the reported information in criminal prosecutions, the Act requires the Secretary to make the reported information "available for a purpose consistent with the provisions of this chapter to any other department or agency of the Federal government" upon request, 31 U.S.C. §1061 (see also 31 C.F.R. §103.43), and requires the grant of use immunity to overcome any claims of self-incrimination, 31 U.S.C. §1060.

The Recordkeeping Requirements

The Bank Secrecy Act's record keeping requirements are found in 12 U.S.C. §1829b, as they relate to insured banks, and 12 U.S.C. §1951-59, as they relate to uninsured banks and other businesses and institutions. The stated purpose is the same as for the reporting requirements; to require records that have "a

high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." 12 U.S.C. §§1829b (a)(2); 1951(b).

The Act itself requires almost no records.[6] As in its reporting provisions, the Act empowers the Secretary to issue regulations "to carry out [its] purpose," 12 U.S.C. §1829b(a)(2) (b); to define institutions and persons affected, 12 U.S.C. §1953(a), (b)(5); see 31 C.F.R. §103.11; to make exemptions, exceptions, alterations or any other special arrangements, 12 U.S.C. §1829b(c), (f); see 31 C.F.R. 103.45; to seek injunctions, 12 U.S.C. §1954; and to assess and collect (or decline to assess and collect) civil penalties, 12 U.S.C. §1956; see 31 C.F.R. §103.47.

The Secretary has implemented these powers by requiring those having foreign financial accounts to record and retain their details, 31 C.F.R. §103.32, and by requiring all financial institutions to record and retain for stated periods enormous masses of information, including:

—details of each extension of credit unsecured by real property in excess of $5,000 (31 C.F.R. §103.33(a));

—records of each "advice, request, or instruction" concerning prospective foreign transactions of almost any type that exceed $10,000 (31 C.F.R. §103.33(b), (c));

[6]The Act does require that insured banks record and retain the identity of any individual required by the Act to report any transactions, 12 U.S.C. §1829b(c), (e). That requirement is reflected in 31 C.F.R. §103.26.

and by requiring banks to record and retain for stated periods:

—the social security or taxpayer identification number of account holders, and

—the original or a copy of:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on governmental agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item other than bank charges or periodic charges made pursuant to agreement with the customer, comprising a debit to a customer's deposit or share account, not re-

quired to be kept, and not specifically exempted under subparagraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank, purchased, received for credit or collection, or otherwise acquired by the bank;

(8) Each item, including checks, drafts, or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means from a person, account or place outside the United States;

(9) A record of each receipt of currency, other monetary instruments, checks, or investment securities, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a person, account or place outside the United States; and

> (10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and to trace a check deposited in such account through its domestic processing system or to supply a description of a deposited check. This subsection shall be applicable only with respect to demand deposits.
>
> 31 C.F.R. §103.34.

The shadow of the infinitely expandable regulation, 31 C.F.R. §103.45, also hung over these recordkeeping requirements, as it permitted the Secretary "in his sole discretion" and "by written order or authorization . . . [to] impose additional recordkeeping . . . requirements authorized by statute, or otherwise modify, the requirements" of the rest of the Regulations.

The recordkeeping requirements, like the reporting requirements, are enforceable by severe civil and criminal sanctions, 12 U.S.C. §§1955-57.

On June 7, 1972, appellants brought suit in the court below to enjoin the operation of the Act and Regulations and for declaratory and other relief, alleging their identities and capacities as persons subject to and affected by the Act and Regulations.[7]

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[7]Appellants Stark, Security National Bank, Marson, and the American Civil Liberties Union of Northern California, Inc., were plaintiffs when the suit was first filed. Appellants Lieberman, Harwood, Bruer and Durell were added in a First Amended Complaint, which was before the Court when plaintiffs' motion for preliminary injunction was heard and decided.

Appellant Security National Bank alleged its capacity as a national bank, the reports and recordkeeping required of it by the Act and Regulations, that such reporting and recordkeeping would force it to violate both good banking practice and its customers' right to privacy, and that it would cause the bank to lose significant numbers of customers and substantial bank deposits (App. 63, 66-68).

Appellants Stark and Marson alleged their capacities as bank customers,[8] the records required to be kept of their accounts, that by means of those records, which were subject to seizure by the Secretary without notice to them, their dues to organizations and associations could be easily and simply determined by the Secretary, and that they would thereby suffer a chilling effect upon their rights of association as protected by the First Amendment (App. 63-64, 69-70).

Appellant American Civil Liberties Union of Northern California, Inc., alleged its capacity as a nonprofit membership corporation having demand deposit accounts in a specified bank,[9] that it is regarded by many as a controversial organization, that it and its members desire to maintain the identities of its members and contributors in strict confidence; that the Act and Regulations would deprive it of its ability to maintain the anonymity of its members and

[8]Stark is a customer of appellant Security National Bank, Marson of the Bank of America (App. 63-64). Both banks are members of the California Bankers Association.

[9]Appellant ACLU maintains accounts in the Wells Fargo Bank, another member of the California Bankers Association (App. 68).

contributors, and that as a result it will lose significant numbers of its members and substantial contributions. (App. 64, 68-69).

Appellant Lieberman alleged that in the recent past he participated in transactions involving the transportation out of the United States of monetary instruments exceeding $5,000 in value, and that he would do so again in the near future (App. 64-65). Appellants Lieberman, Harwood, Bruer and Durell alleged their capacities as persons maintaining financial interests in and signature authority over one or more bank accounts in foreign countries (App. 64-65).

On June 22, 1972, the California Bankers Association, whose members are all of the 158 state and national banks in California, filed an action for identical relief. The Association alleged its members' capacities as banks; that implementation of the Act and Regulations would cost them many thousands of dollars per year; that each member bank's relationship with its depositors is founded upon the maintenance of confidentiality of the depositors' business transactions; that by virtue of the destruction of that relationship occasioned by compliance with the Act and Regulations, the member banks will lose numerous customers' good-will, confidence, deposits and accounts; and that compliance would make its members unwilling agents of and co-conspirators with the government in illegal intrusion into the First, Fourth, Fifth Amendment, and privacy rights of their customers (App. 9-14).

The actions were consolidated and a three-judge court was convened pursuant to 28 U.S.C. §2282. A single judge issued a temporary restraining order on June 29, 1972, restraining the operation of the reporting (but not the recordkeeping) provisions of the Act and Regulations, and calendared plaintiff's motions for preliminary injunction for July 17, 1973.

Pursuant to Local Rule 115 of the District Court,[10] plaintiffs' motions were heard and decided on affidavits alone. The affidavits, which were uncontested, established these, among other, facts:

—The plaintiff Security National Bank had not and, but for the Act and Regulations, would not make or keep substantial numbers of records required to be made or kept by the Act and Regulations (App. 54-55);

—The customers of plaintiff Security National Bank approved of its role in the litigation, were concerned for the privacy of their accounts, and caused the General Counsel of the bank to conclude that "compliance with the Act and Regulations at issue . . . will cause our bank to lose a substantial [amount] of customer confidence, customers and deposits" (App. 28-29);

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[10]Rule 115, Local Rules of Practice, United States District Court for the Northern District of California, provides in relevant part:

Rule 115

Affidavits on Motions

(a) Use of Affidavits. Factual contentions involved in any pre-trial or post-trial motion shall be initially presented and heard upon affidavits. Oral testimony will not be received at hearings on such motions except as the court may require or allow oral examination of the affiants to resolve factual issues shown by the affidavits to be in dispute.

—The cost to just one bank (the Bank of America) of implementing the Act and Regulations for the first year alone would be $392,631.84 (App. 24-25);

—Many members of the plaintiff American Civil Liberties Union of Northern California, Inc., historically regarded by some as dissident and dangerous and historically a target for retaliation, are greatly reluctant to have that affiliation become known by employers, government, and the public at large; many are employed in the armed forces, the aerospace industry, education and government jobs. Most of them contribute by check (App. 33-34, 52-53).

The defendants filed no affidavits or answer and presented no evidence. Defendants contented themselves with a Motion to Dismiss, which was denied without prejudice.

After extending the temporary restraining order and taking the motions for preliminary injunctions under submission, the three-judge court (one judge dissenting) enjoined the operation of the reporting requirements of the Act and Regulations insofar as they related to domestic transactions because they violated the Fourth Amendment's prohibition of unreasonable searches and seizures, finding the relationship between the scope of the seizure and its purpose "farfetched." From this ruling and the resultant partial preliminary injunction the government has appealed.

However, the District Court unanimously upheld the reporting requirements concerning foreign transactions, two judges feeling compelled to that result

by this Court's holding in *United States v. United States District Court,* 407 U.S. 297 (1972), and unanimously upheld, without explanation, all of the recordkeeping requirements imposed by the Act and Regulations.

From these latter rulings and the resultant partial denial of their motion for a preliminary injunction, these appellants appeal.

SUMMARY OF ARGUMENT

About 20 billion checks pass through their makers' American banks each year. 116 Cong.Rec. 16961 (1970). They reflect transactions as varied as American financial life. A tiny fraction of those transactions may evidence criminality. A very few may be of interest to some regulatory agency. But most—checks to grocers, landlords, automobile dealers, and the like—are untainted by wrongdoing, irrelevant to regulation, and of no legitimate interest to the government.

The Bank Secrecy Act requires that banks, on pain of severe civil and criminal sanctions and at their own expense, copy and retain not only the fronts and backs of all those checks but also millions of other documents reflecting transactions equally innocent, equally unregulated, and equally of no legitimate interest to government. It does so for the primary and express purpose of creating and preserving evidence of crime.

The Bank Secrecy Act requires that financial institutions and parties to large financial transactions submit the documentary details of those transactions to the government, regardless of their nature, regardless of their guilt or innocence, and regardless of their relevancy to any legitimate interest of government. It does so for the same primary purpose—collecting evidence of crime.

Appellants urge that the Act constitutes the largest mass search and seizure within memory—a search and seizure undertaken without the slightest heed to the requirements of the Fourth Amendment that searches and seizures be authorized by warrant, carefully limited in scope, and supported by probable cause or its administrative equivalent.

Appellants argue here that the reports required by the Act are outright seizures that violate all those well-established restrictions, and that the records made and kept by virtue of the Act are made and kept by unwilling agents of the government—agents who, in the act of making and keeping them, perform the same mass searches and seizures accomplished by the reporting provisions of the Act.

Appellants believe and argue that the Fourth and Fifth Amendments "run almost into each other," *Boyd v. United States,* 116 U.S. 616, 630 (1886), to prohibit the government from forcing its citizens to create, keep, and supply evidence for governmental use against themselves and each other.

Finally, the appellant American Civil Liberties Union of Northern California, Inc., urges that its

existence as a controversial membership organization —the anonymity of whose members is protected by the First Amendment—is gravely undermined when the government forces its bank to make and keep available a list of its members and contributors for no reason other than the anticipatory creation of what the government hopes will be evidence of unstated future crime.

ARGUMENT

I.

THE ANTICIPATORY CREATION AND COLLECTION OF EVIDENCE FOR USE IN CRIMINAL AND CIVIL PROCEEDINGS ACCOMPLISHED BY THE REPORTING PROVISIONS OF THE BANK SECRECY ACT CONSTITUTE A MASSIVE, INDISCRIMINATE, AND WHOLLY UNREASONABLE SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT.

A. The Bank Secrecy Act is almost exclusively aimed at the enforcement of the criminal law, and must therefore be measured against the limits appropriate to criminal law enforcement.

The language and legislative history of the Bank Secrecy Act leave no doubt that its dominant—almost exclusive—purpose is to create and collect evidence of crime.

The statements of purpose in the Act (see 31 U.S.C. §1051; 12 U.S.C. §§1829b(a)(2); 1951(b)) say it is intended to require reports and records useful in "criminal, tax, and regulatory" law enforcement—a cryptic phrase spanning the whole of enforceable law —and always list the criminal purpose first. The Act's provisions for distribution of evidence through-

out the federal government, 31 U.S.C. §1061, use immunity to overcome claims of self-incrimination, 31 U.S.C. §1060, and additional criminal penalties for violations of the Act in assistance of other federal crimes, 12 U.S.C. §1957, 31 U.S.C. §1059, all attest to the primary goal of criminal law enforcement.

The legislative history of the Act makes the dominance of the criminal law enforcement purpose unmistakable. The bill, H.R. 15073 (1970), by Representative Patman, was reported favorably from the House Banking and Currency Committee in House Report No. 91-975, 2 U.S. Code Cong. & Admin. News 4394 (1970) (hereafter "House Report"), and was debated and passed on the floor of the House on May 25, 1970, 116 Cong.Rec. 16949 and ff. (1970). A nearly identical bill, S. 3678 (1970), by Senator Proxmire, was reported favorably from the Senate Banking and Currency Committee in Senate Report No. 91-1139 (hereafter "Senate Report"), debated and passed on the floor of the Senate on September 18, 1970, 116 Cong.Rec. 32621 and ff. (1970), and sent to a conference committee. The Conference Committee made minor alterations and reported the House bill favorably in lieu of the Senate version, Conference Report No. 91-1587, 2 U.S. Code Cong. & Admin. News 4411 and ff. (1970). The bill was then passed by both houses and was signed by the President on October 26, 1970.

The House Report begins its explanation of the bill by noting an "increase in criminal activity" utilizing financial institutions, House Report at 4395.

"Petty criminals, members of the underworld, those engaging in 'white collar' crime and income tax evaders use, in one way or another, financial institutions in carrying on their affairs." *Ibid.* Nearly all of the justification presented for the Act in the House Report relates exclusively to the enforcement of the criminal law. The requirement of the Act (12 U.S.C. §1829b(c); 31 C.F.R. §103.34(a)) that banks require identification of account holders, for example, was justified because "the identity of such individuals provides an important key in the investigation and prosecution of criminal activity." *Id.* at 4396. The reason for requiring large domestic cash transactions to be reported is similarly straightforward:

> Criminals deal in money—cash or its equivalent. The deposit and withdrawal of large amounts of currency or its equivalent (monetary instruments) under unusual circumstances may betray a criminal activity. The money in many of these transactions may represent anything from proceeds of a lottery racket to money for the bribery of public officials.
>
> *Ibid.*

See also House Report at 4396, 4400, 4404.

The debates on the floor of the House settle any doubt about the dominant purpose of the bill. Its first sponsor said:

> With respect to full financial recordkeeping, the problem can be simply stated; in the past decade, as organized crime and criminals have become more sophisticated, more and greater use has been made by criminal elements of our Nation's finan-

> cial institutions. Law enforcement officials believe that an effective attack on organized crime requires the maintenance of adequate and appropriate records by financial institutions.
>
> 116 Cong.Rec. 16950 (1970).

The bill's author then rose on this note: "This is really a bill which, if enacted into law, will be the longest step in the direction of stopping crime than any other we have had before this Congress in a long time." *Id.* at 16951. The bill, Representative Patman explained, was originally conceived simply as a measure to prevent illegal use of foreign bank accounts. But, he said,

> [w]e also discovered that secret foreign bank accounts were not the only criminal activities related to the banking field. The major law enforcement authority—the Justice Department—of the U.S. Government called our attention to the urgent need for regulations which would make uniform and adequate the present recordkeeping practices, or lack of recordkeeping practices, by domestic banks and other financial institutions.
>
> *Id.* at 16951.

Returning for the time to foreign bank accounts, the author warned that "American criminals from the simple tax evader to members of the organized underworld discovered that secret Swiss accounts had a use of particular interest to them." *Ibid.* Stating that such accounts "have been used in support of an almost limitless variety of criminal schemes," *ibid.*, Representative Patman then summarized "some of the cases discussed in testimony before the committee" concern-

ing the need for information about foreign bank accounts. *Ibid.* He proceeded, *id.* at 51-52, to summarize the facts of sixteen separate cases which illustrated the need for the bill. Fifteen of them were criminal cases; the sixteenth, civil fraud.

In explaining the recordkeeping requirements of the bill, Representative Patman frankly stated that they had originated with the Justice Department and the Internal Revenue Service, *id.* at 16953, in response to two problems. The first was that "[a] trend was developing in the larger banks away from their traditional practices of microfilming all checks drawn upon them." *Ibid.* This had hampered prosecutors. *Ibid.* The second problem was the identification of depositors: "A typical example might involve a situation where a person with a criminal reputation holds an account but does not personally make deposits or withdrawals." *Ibid.*

Financial institutions other than banks were added, Representative Patman explained, because "we did not want to drive criminals away from using banks only to the use of other financial institutions." *Id.* at 16954.

The author's discussion of the broad exemptive powers of the Secretary[11] was particularly revealing.

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[11] 31 U.S.C. §1055 provides, in relevant part:

> The Secretary may make such exemptions from any requirement otherwise imposed under this chapter as he may deem appropriate. Any such exemption may be conditional or unconditional, by regulation, order, or licensing, or any combination thereof, and may relate to any particular transaction, to the type or amount of the transaction, to the party or parties or the classification of parties, or to any combination thereof . . .

See also 31 C.F.R. §103.45; Senate Report at 4, 7.

The purpose of the provisions enabling the Secretary to make such exemptions is to enable him to exempt "legitimate" business entirely from the Act:

> It may be felt that we are so shackling international commerce that tremendous damage may be done to the foreign trade position of this country. Equipped with this exemptive power, the Secretary of the Treasury will be able to let legitimate international commerce flow free and unfettered. The Secretary's primary responsibility under Title II [the reporting provisions] is to see to it that criminals do not take undue advantage of international trade and go undetected and unpunished.
>
> *Ibid.*

Mr. Patman summarized by saying:

> . . . I would be the first to admit that this legislation does not provide perfect crime prevention. However, it is felt that the legislation will substantially increase the risk of discovery of any criminal who undertakes to hide his activity behind foreign secrecy.
>
> *Ibid.*

Representative Patman concluded by introducing into the record a lengthy newspaper article entitled "Congress Aims at Organized Crime's Moneybags," an article describing the Bank Secrecy Act as half of a pair with the then-pending Organized Crime Control Act. *Ibid.*

Desultory debate followed, during which Representative Pepper, Chairman of the House Select Committee on Crime, rose to commend the members of the

Banking and Currency Committee "for this important weapon which they have forged against the ugly octopus of organized crime," *id.* at 16965. The bill was adopted by a vote of 302 to 0. *Id.* at 16972-73.

The central purpose of the Bank Secrecy Act—criminal law enforcement—is equally apparent from the Senate Report and the debates on the floor of the Senate. Excerpts from the Senate Report follow:

> The purpose of the bill is to provide law enforcement authorities with greater evidence of financial transactions in order to reduce the incidence of white-collar crime.
>
> Senate Report at 1.

> Copies of checks are valuable in investigating domestic crimes as well as those involving secret foreign bank accounts. For example, a single microfilmed check in the amount of $5.20 helped in the conviction of Frank Costello.
>
> *Id.* at 5.

> Reports are not a foolproof method for preventing organized crime from sending currency out of the country. Obviously, a criminal who is already breaking the law could just as easily ignore the reporting requirement. The significance of requiring reports is that it provides the Justice Department with another means of obtaining a conviction. The mere failure to file a report would constitute a criminal violation . . .
>
> *Id.* at 7.

> It is believed that these penalties will constitute a significant deterrent to organized crime. At the same time, the Secretary has broad discretionary

> authority to return seized currency or waive the civil penalties which he could use to prevent ordinary citizens or businessmen from being unduly penalized for an inadvertent violation.
>
> *Ibid.*

> The objective of the chapter [requiring reports] is to aid law enforcement authorities to prosecute U.S. criminals.
>
> *Ibid.*

> There is no assurance that the recordkeeping requirements will end the misuse of foreign bank accounts. White-collar criminals may not be expected to keep elaborate records of their foreign financial transactions if those records establish the illegal nature of their activities. However, the mere failure to keep the records required by the regulations constitutes a criminal violation. Thus, law-enforcement officials could obtain convictions of stock swindlers, tax evaders, and other white-collar criminals for a failure to keep records, while it might be more difficult to prove the exact range of their other illegal activities.
>
> *Id.* at 8.

The debate on the Senate floor continued in the same vein. Senator Proxmire, the author, rose to proclaim that ". . . the purpose of the bill is to provide law enforcement authorities with greater evidence of financial transactions in order to reduce the incidence of white-collar crime." 116 Cong.Rec. 32627 (1970). After lengthy discussion of the effect of proposed amendments upon that goal, the bill was sent to a conference committee, which reported out the House version of the bill. *Id.* at 32644.

In light of the provisions of the Act and its legislative history, it cannot be disputed that the dominant purpose of the Bank Secrecy Act is the creation, preservation, and collection of evidence of crime. It is against the standards applicable to the criminal law, then, that its constitutionality must be measured.

B. Bank customers and banks have a reasonable expectation of privacy in the documents detailing their private financial transactions.

"Our problem, in terms of the principles announced in Katz, is what expectations of privacy are constitutionally 'justifiable' —what expectations the Fourth Amendment will protect in the absence of a warrant." *United States v. White,* 401 U.S. 745, 752 (1971). We argue here that bank customers and banks have a constitutionally justifiable expectation of privacy in the documentary details of the financial transactions reflected by their bank accounts.

The bank appellants alleged in the court below that their business depended upon the maintenance of confidentiality concerning their customers' accounts,[12] and proved by affidavit[13] that such was the case. This assertion has ample support.

It is hornbook law[14] that bank customers may expect their banks to treat their financial affairs as confi-

[12]App. 12-13, 68.

[13]App. 19-22.

[14]. . . it is an implied term of the contract between the banker and his customer that the banker will not divulge to third persons without the consent of the customer, express or implied, either the state of the customer's account or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the

dential. "The right of privacy and the right to keep confidential one's financial affairs is well recognized." *Hecht v. Pro-Football, Inc.* 46 F.R.D. 605, 607 (D.D.C. 1969). In perhaps the leading case, the California Supreme Court struck down as a violation of the constitutional right to privacy a statute requiring the disclosure by public officials of financial interests exceeding $10,000. *City of Carmel-by-the-Sea v. Young,* 2 Cal.3d 259 (1970).

Violation of that privacy by a bank has frequently been held to create a cause of action in contract. See, e.g., *Milohnich v. First Nat'l Bank,* 224 So.2d 759 (Fla.Ct.App. 1969), and authorities cited; *Sparks v. Union Trust Co.,* 256 N.C. 478, 124 S.E.2d 365 (1962); *Peterson v. Idaho First Nat'l Bank,* 83 Idaho 578, 367 P.2d 284 (1961).

Even as between private parties, the public allegation of debt arising out of private financial transactions has been traditionally held to invade privacy, whether true or false. See, *e.g., Trammel v. Citizens News Co.,* 285 Ky. 529, 148 S.W.2d 708 (1941); *Biederman's of Springfield v. Wright,* 322 S.W.2d 892, 896 (Mo. 1959), and cases cited.

Brex v. Smith, 104 N.J.Eq. 386, 146 A. 34 (1929), is particularly relevant here. In *Brex* the court enjoined a prosecutor from obtaining the bank records of all the city's policemen, holding that the depositors had a "property interest" in the information in their

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banker is compelled to do so by court order, the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.
10 Am.Jur.2d, *Banks,* §332.

accounts and that the bank had "an implied obligation . . . to keep these [accounts] from scrutiny until compelled by a court of competent jurisdiction to do otherwise." See also *United States v. First Nat'l Bank of Mobile,* 67 F.Supp. 616 (S.D.Ala. 1946).

The District Court was quite right in concluding that:

> . . . within these limitations . . . a bank customer does expect a degree of privacy in these matters and . . . such an expectation is one that society has been prepared to recognize as 'reasonable.' 347 F.Supp. at 1248-49, App. 86.

See *Katz v. United States,* 389 U.S. 347, 361 (1967) (Harlan, J., concurring).[15]

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[15]The Government argues in its Jurisdictional Statement in its consolidated appeal (p. 17) that persons engaged in large currency transactions have no justifiable expectation of privacy in those transactions because "banks have been reporting such transactions for more than twenty-five years" under the Trading with the Enemy Act. This, if true, would undoubtedly surprise most bank customers. But it was partly the insufficiency of the Trading with the Enemy Act which prompted the Bank Secrecy Act, see, *e.g.,* 116 Cong.Rec. 16954 (1970); it required banks to make a subjective judgment on the legitimacy of a transaction before deciding to report it. Moreover, the argument only affects the reasonable expectation of privacy in large cash transactions, not any other kind. At that, the argument is wrong; in *City of Carmel-by-the-Sea v. Young, supra,* the California Supreme Court struck down a disclosure statute dealing only with holdings worth more than $10,000, the exact limit at issue here. Finally, the Trading with the Enemy Act had both its origin and justification in the War Power, arguments unavailable in this case.

This Court should firmly reject any notion that the existence of the Bank Secrecy Act, public knowledge of it, or the regrettably frequent incidents of "informal"—i.e., illegal— access to bank accounts have any bearing upon the existence or reasonableness of the expectation of privacy. We respectfully venture that this Court would have reached no different results in *United States v. United States District Court,* or *Katz v. United States,* both *supra,* if the government had purchased lavish advertisements on television and

C. Governmental compulsion to produce documents has traditionally been treated as a search and seizure subject to the limitations of the Fourth Amendment.

The right to be secure in one's papers has been applied in a long and unbroken line of this Court's decisions to the compulsory production of one's books and records. See, *e.g., Boyd v. United States,* 116 U.S. 616 (1886) (court order to produce invoice), in which this court held that:

> . . . a compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be; because it is a material ingredient and effects the sole object and purpose of search and seizure. 116 U.S. at 622.

Accord: *Hale v. Henkel,* 201 U.S. 43, 76 (1906) (subpoena duces tecum); *Oklahoma Press Publ. Co. v. Walling,* 327 U.S. 186, 214-16 (1946) (subpoena duces tecum); *United States v. Morton Salt Co.,* 338 U.S. 632, 651-52 (1950) (administrative order to report based upon statute); *See v. City of Seattle,* 387 U.S. 541, 545 (1967) (discussion of administrative subpoenas). See also *McMann v. Securities and Exchange Comm'n,* 87 F.2d 377, 379 (2d Cir. 1937) (L. Hand, J.).

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in the newspapers announcing that henceforth everyone's telephone was subject to being tapped. Any other result would permit the abolition of a reasonable expectation of privacy merely by giving publicity to its violations. *Cf. In re Heutsche,* ..... U.S. ....., 42 U.S.L.W. 3224-25 (Oct. 15, 1973) (Douglas, J., dissenting).

Early this year this Court once again recognized that distinguished line of decisions when, in *United States v. Dionisio,* ..... U.S. ....., 35 L.Ed.2d 67, 78 (1973), it said:

> The Fourth Amendment provides protection against a grand jury subpoena duces tecum too sweeping in its terms 'to be regarded as reasonable.'

The reports demanded by the Bank Secrecy Act must, therefore, be treated as outright searches and seizures subject to the restrictions of the Fourth Amendment.

D. The reports required by the Act are unreasonable searches and seizures because they are accomplished without a warrant or judicial supervision of any kind.

It is a cornerstone of this Court's Fourth Amendment jurisprudence that a search and seizure conducted without a warrant is *per se* unreasonable, subject to certain "jealously and carefully drawn" exceptions, *Jones v. United States,* 357 U.S. 493, 499 (1958) (Harlan, J., for the Court). *Almeida-Sanchez v. United States,* ..... U.S. ....., 37 L.Ed.2d 596, 606-07 (1973) (Powell, J., concurring); *United States v. United States District Court,* 407 U.S. 297, 316 (1972); *Coolidge v. New Hampshire,* 403 U.S. 443, 470-71 (1971); *Vale v. Louisiana,* 399 U.S. 30, 34-35 (1970); *Chimel v. California,* 395 U.S. 752, 762 (1969); *Mancusi v. Deforte,* 392 U.S. 364, 370 (1968); *Katz v. United States,* 389 U.S. 347, 356-57 (1967); *Camara v. Municipal Court,* 387 U.S. 523, 528-29 (1967); *Stoner v. California,* 376 U.S. 483, 486 (1964); *Preston v. United States,* 376 U.S. 364, 367

(1964); *Chapman v. United States,* 365 U.S. 610, 613-15 (1961); *United States v. Jeffers,* 342 U.S. 48, 51 (1951); *Johnson v. United States,* 333 U.S. 10, 13-15 (1948); *Agnello v. United States,* 269 U.S. 20, 32 (1925).

The seizures accomplished by the reporting requirements of the Bank Secrecy Act proceed with absolute unconcern for the warrant requirement, even though the primary purpose of the Act is creating and collecting evidence for use in criminal cases. None of the exigent circumstances held to excuse the absence of a warrant can conceivably apply to searches and seizures that are wholly anticipatory, as these are. The searches and seizures are therefore unreasonable *per se.*[16]

The fact that a secondary purpose of the Act is the creation and collection of evidence of regulatory vio-

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[16]Nothing in the "required records" doctrine of *Shapiro v. United States,* 335 U.S. 1 (1948), alters this conclusion. That doctrine applies only to the claim of self-incrimination, not to the legality of a warrantless search and seizure. Moreover, the doctrine, as recently explained in *Grosso v. United States,* 390 U.S. 62, 67-68 (1968), has three requirements:

> . . . first, the purposes of the United States' inquiry must be essentially regulatory, second, information is to be obtained by requiring the preservation of records of a kind which the regulated party has customarily kept; and third, the records themselves must have assumed 'public aspects' which render them at least analogous to public documents.

None of these requirements is present here. The purpose of the Act is primarily to aid criminal prosecutions; its secondary purpose is to aid in enforcement of unstated regulatory schemes the sum total of which do not affect all the transactions required to be reported. The information is not of the kind "customarily kept" by the parties; if it were, there would be no need to require it. Nor do the documents demanded have "public aspects" which would render them analogous to public documents.

lations hardly justifies the abandonment of the Fourth Amendment rules concerning criminal prosecutions.[17] Even assuming, however, contrary to the language and history of the Act, that its purpose is wholly regulatory, still the warrant requirement cannot be forgotten entirely. *Camara v. Municipal Court,* 387 U.S. 523 (1967); *See v. City of Seattle,* 387 U.S. 541 (1967). Although the Court long ago upheld, as against a Fourth Amendment claim, the power of an Internal Revenue Service agent to demand documents by administrative summons, *First Nat'l Bank v. United States,* 267 U.S. 576 (1925) (see also 26 U.S.C. §7602), that result depends, among other factors, upon the existence of judicial supervision: the summons cannot be enforced without the scrutiny and subsequent order of a court. See *Donaldson v. United States,* 400 U.S. 517 (1971); *Couch v. United States,* ..... U.S. ....., 34 L.Ed.2d 548 (1973). No such supervision exists here; violations of the reporting provisions of the Act are punishable harshly and instantly, by civil sanctions wielded by the Secretary and by criminal penalties as well. 12 U.S.C. §§1955-56; 31 U.S.C. §§1056, 1058.[18]

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[17] *Cf.* Mr. Justice Brennan's statement, concurring in *Grosso, supra:*

> Whatever else Congress may have means to achieve, an obvious purpose of this statutory system clearly was to coerce evidence from persons engaged in illegal activities for use in their prosecution.
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> 390 U.S. at 74.

[18] Nor does the fact that the seizures are authorized by an Act of Congress rescue them from unconstitutionality: ". . . [N]o Act of Congress can authorize a violation of the Constitution." *Almeida-Sanchez v. United States, supra,* 37 L.Ed.2d at 602. This Court has, it is true, approved some congressionally authorized searches without warrants. *United States v. Biswell,* 406 U.S. 311 (1972); *Colon-*

Because the Bank Secrecy Act wholly ignores the warrant requirement in its reporting provisions, those provisions are void both in their primary criminal application and in their secondary regulatory function as well.[19]

We do not distinguish here between the reporting of domestic and foreign transactions, as did the District Court. The District Court felt compelled to that result by *United States v. United States District Court, supra,* 347 F.Supp. at 1245; App. 78. There the distinction between foreign and domestic surveillance had a statutory basis, 18 U.S.C. §2511(3); nonetheless this Court twice expressly declined to rule on the possible application of its opinion to foreign surveillance. 407 U.S. 308, 321-22. Whatever the difference may be between executive power to conduct surveillance to protect against domestic and foreign enemies,

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nade Catering Corp. v. United States, 397 U.S. 72 (1970). But these searches are hardly "warrantless inspections of commercial enterprises engaged in businesses closely regulated and licensed by the Government." Surveillance of their customers can hardly be characterized as one of the "burdens" of banks. Banks can hardly be said to have consented to the surveillance forced upon them for purposes unrelated to banking. A bank customer does not, as Mr. Justice Powell put it, "[submit] to inspections in exchange for a special perquisite." And the amazing determination that, for example, *all* checks passing through American banks have a "high degree of usefulness" in law enforcement is a determination made largely by the Secretary, not the congress, and does not rise to the level of "the considered judgment of Congress" mentioned by Mr. Justice White. *Almeida-Sanchez v. United States, supra,* at 601-02, 607, 613.

[19] *Wyman v. James,* 400 U.S. 309 (1971), is inapplicable here. Five members of the Court in *Wyman* did not even find that a search was contemplated, an issue not present here. See 400 U.S. at 316-18. On the assumption that a search was involved, six members of the Court found eleven reasons why the search was reasonable, *id.* at 318-24. Not one of those eleven reasons is relevant here.

the factors influencing the extent of that power are not present here—the foreign reporting requirements are expressly aimed at *domestic* criminal suspects. Finally, documentation of the financial details of foreign transactions—as opposed to contraband in transit—has been held entitled to full Fourth Amendment protection against unreasonable searches and seizures at least since *Boyd v. United States,* 116 U.S. 616 (1886), in which the document held obtained by an unreasonable search and seizure was a shipping invoice for 29 cases of plate glass imported into the United States from a foreign country. 116 U.S. at 618.[20]

E. The reports required by the Act are unreasonable searches and seizures because they are wholly excessive in scope and totally lacking in particularity.

One of the central functions of the warrant requirement of the Fourth Amendment is to ensure that the requirement of particularity in the Amendment's second clause is respected. *Coolidge v. New Hampshire, supra,* 403 U.S. at 467; *Berger v. New York,* 388 U.S. 41, 55-60 (1967) (Clark, J., for the Court). Without judicial supervision a search "reasonable in its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope." *Terry v. Ohio,* 392 U.S. 1, 18 (1968). The restriction on scope applies, of course, whether or not a warrant has been obtained. See, *e.g., Von Cleef v. New Jersey,* 395 U.S.

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[20]It is worth noting that every commentator who has addressed the distinction drawn by the District Court has rejected it. See, *e.g.,* Note, 37 Albany L.Rev. 566, 577 (1973); Note, 51 Texas L.Rev. 602, 603 n. 11 (1973); Note, 14 William and Mary L.Rev. 929, 950-51 (1973).

814 (1969) (warrantless seizure of several thousand articles held invalid); *Stanford v. Texas,* 379 U.S. 476 (1965) (seizure pursuant to warrant of more than 2,000 items of literature held invalid); *Kremen v. United States,* 353 U.S. 346 (1957) (warrantless seizure of contents of cabin held invalid).

This restriction on the scope of search and seizure extends to the administrative seizure of documents, and may invalidate an otherwise valid seizure:

> . . . because it is out of proportion to the end sought, as when the person served is required to fetch all his books at once to an exploratory investigation whose purposes and limits can be determined only as it proceeds.

McMann v. Securities and Exchange Comm'n, 87 F.2d 377, 379 (2d Cir. 1937) (L. Hand, J.). Thus even wholly administrative searches have been invalidated because unreasonable in scope. See, *e.g., United States v. Theodore,* ____ F.2d ____, 41 U.S.L.W. 2670 (4th Cir., May 31, 1973) (IRS summons demanding more than 1500 tax returns and accompanying documentation held unreasonable fishing expedition); see also *United States v. Harrington,* 388 F.2d 520, 523 (2d Cir. 1968); *United States v. Dauphin Trust Co.,* 385 F.2d 129 (3rd Cir. 1967).

Almost any conceivable application of this rule to the reports required by the Bank Secrecy Act invalidates those reports. No reliable estimates tell us how many domestic cash transactions involving more than $10,000 occur, or how many monetary instruments worth more than $5,000 cross American borders each

year. Whatever their number, however, only a small portion can be of interest to criminal and regulatory schemes. The mass seizure of the documentary details of all such transactions is wholly "out of proportion to the end sought,"[21] and is in effect exactly the sort of general warrant the Fourth Amendment was designed to guard against. See generally *Stanford v. Texas,* 379 U.S. 476 (1965).

F. The reports required by the Act are unreasonable searches and seizures because they are conducted without probable cause and without adherence to any other standard of materiality or relevancy.

For criminal purposes the Fourth Amendment explicitly commands that searches and seizures be supported by probable cause. See, *e.g.,* Rule 41(c), Federal Rules of Criminal Procedure.[22]

By definition it is impossible for the reports required by the Bank Secrecy Act to meet this or any

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[21]The massive, impersonal, indiscriminate seizures authorized by the Act readily invite comparison to the "ridiculous warrant against the whole English nation" condemned in *Wilkes v. Wood,* 19 How. St. Tr. 1153 (1763), and the hated "general warrants" condemned in *Entick v. Carrington,* 19 How.St.Tr. 1029 (1765). See II May's Constitutional History of England, 246 (Am.Ed. 1864); *Stanford v. Texas,* 379 U.S. 476, 483-84 (1965).

[22]Substantive standards of materiality and relevancy differ for administrative summons and subpoenas; the probable cause requirement of the Fourth Amendment is satisfied by reasonable relevancy to a particular purpose:

> The agency's particular demand for access will of course be measured, in terms of probable cause to issue a warrant, against a flexible standard of reasonableness . . .

See v. City of Seattle, 387 U.S. 541, 545 (1967). But as a minimum the subpoena must be "sufficiently . . . relevant in purpose," *id.* at 544, to satisfy the Fourth Amendment. Most statutes authorizing administrative searches codify this standard. See, *e.g.,* 26 U.S.C. §7602 (agent of IRS may examine books and papers which are "relevant or material" to a specific inquiry).

other articulable standard of relevancy, because, being anticipatory, they relate to no particular investigation, proceeding, or regulatory scheme. The fact that they are all-purpose does not justify the fact that they are without limit; their general purpose argues for a high standard rather than none at all.[23] Because they seek to serve investigations and proceedings not yet begun or even imagined, it is impossible for them to be measured against any criminal or civil limitation on materiality and relevancy. Without discrimination they seize the documentary details of transactions which may be laden with criminality or wholly innocent of it; transactions which may be highly important to a regulatory scheme or completely divorced from any present, future, or even permissible regulatory activity. To permit such wholly anticipatory searches and seizures would be not just to abandon the requirement of probable cause, but to forfeit every measurable standard of materiality and relevancy imposed by the Fourth Amendment.

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[23]Mr. Justice Stewart's view of the eavesdropping invalidated in *Berger v. New York, supra,* 388 U.S. at 69, applies perfectly here:

> The need for particularity and evidence of reliability in the showing required when judicial authorization is sought . . . is especially great. The standard of reasonableness embodied in the Fourth Amendment matches the degree of intrusion. By its very nature electronic eavesdropping for a 60-day period, even of a specified office, involves a broad invasion of a constitutionally protected area. Only the most precise and rigorous standard of probable cause should justify an intrusion of this sort.

The intrusion in *Berger,* by comparison with the Bank Secrecy Act, is minor indeed.

II.

THE COERCED CREATION AND RETENTION OF DOCUMENTS FOR POSSIBLE FUTURE USE IN CRIMINAL AND CIVIL PROCEEDINGS—FORCED UPON PRIVATE CITIZENS BY THE RECORDKEEPING REQUIREMENTS OF THE BANK SECRECY ACT—VIOLATE THE FOURTH AMENDMENT'S PROHIBITION OF UNREASONABLE SEARCHES AND SEIZURES.

A. Records which would not be made or kept but for the commands of the Act suffer all the constitutional infirmities of the reports required by the Act because instantly transmutable into reports under 31 C.F.R. §103.45.

Regulation 31 C.F.R. §103.45, as it existed when the District Court ruled,[24] permitted the Secretary "in his sole discretion," to "impose additional recordkeeping or reporting requirements," by a simple "written order or authorization," a term which the Secretary retained the power to define. 31 C.F.R. §103.45(b).

Thus the Secretary could order the immediate reporting of any records made or kept under the compulsion of the Act, usually without notice to the subject of the records and always without judicial intervention of any sort. Insofar as records could be transmuted into reports under 31 C.F.R. §103.45, their

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[24]The fact that the Regulation has since been amended to reduce its drastic scope neither undercuts the District Court's decision nor moots the controversy. Changes in administrative regulations in response to successful litigation are common. In *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966), for example, a new police regulation prohibiting mass searches that were the subject of the litigation was held not to end the controversy: "[P]rotestations of repentance and reform timed . . . to blunt the force of a lawsuit offer insufficient assurance" that the conduct will not be repeated. *Id.* at 203. See also *Gray v. Sanders*, 372 U.S. 368 (1963); *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953).

compulsion suffers from all the defects ascribed above to the reporting provisions of the Act.

B. A bank is the agent of government whenever, under compulsion, it makes or keeps records it would not otherwise make or keep and which are irrelevant to its regulation. The making or keeping of such records therefore constitutes a search and seizure at the time they are made or kept.

If a private person for his own purposes enters the dwelling of another, rightfully or wrongfully, and finds and reports contraband, no search governed by the Fourth Amendment has occurred. See, *e.g., Burdeau v. McDowell,* 256 U.S. 465 (1921). But if a federal official "had a hand" in the search, even by making a request that could be refused, it is a governmental search. *Lustig v. United States,* 338 U.S. 74, 78 (1941) (Frankfurter, J.).

Thus, searches made by private parties at governmental request are governmental searches—whether or not the private party could rightfully have searched in the absence of governmental influence. See, *e.g., Corngold v. United States,* 367 F.2d 1 (9th Cir. 1966), in which an airline employee who searched luggage at police request was held an agent of the government in so doing, notwithstanding the fact that the contract of carriage reserved to the airline the right of inspection. See also *Stoner v. California,* 376 U.S. 483 (1964); *United States v. Jeffers,* 342 U.S. 48 (1951).

If the mere request to make a search creates an agency relationship, then *a fortiori* the command to do so creates the same relationship. Here, in the

making and retention of records that a bank would not make or retain but for the coercion of the Act, the bank acts as the agent of the government when such records are made or kept.[25]

Perhaps because the result is so obvious, appellants have been unable to find decisions concerning an agency relationship based upon a command of law to do an affirmative act on pain of civil and criminal penalties.[26] But this Court has found it necessary on many occasions to draw the line between governmental and private action, and in many cases governmental involvement far less than outright coercion has been held sufficient to make constitutional guarantees applicable to nominally "private" behavior.

Thus, in *Burton v. Wilmington Parking Authority,* 365 U.S. 715 (1961), the state's action as a "joint participant" was held to indicate "that degree of state participation and involvement" necessary to support a finding of state action, *id.* at 724-25. And in *Reitman v. Mulkey,* 387 U.S. 369 (1967), the fact that California's voters had added to its Constitution a provision that "expressly authorized and constitutionalized" the private "right" to discriminate was

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[25]Records which banks would ordinarily make or keep in their voluntary business practice, or according to a valid order of an agency entitled to regulate banks, made for the purpose of regulating banks, are unaffected by the agency doctrine.

[26]*Cf. United States v. United Mine Workers,* 330 U.S. 258, 284-88 (1947), in which coal mine workers were found "employees" of the government within the meaning of an exception to the anti-injunction rule of the Norris-La Guardia Act where the government had seized the coal mines pursuant to the War Labor Disputes Act and had required the miners to work without striking or face civil and criminal sanctions.

held to support the California Supreme Court's conclusion that the section "would encourage and significantly involve" the state in discrimination and therefore result in sufficient state action to make constitutional guarantees applicable. *Id.* at 376.

Wherever in those cases this Court has even considered the significance of governmental coercion, it has always said that coercion would clearly make the action of otherwise private parties state action. In *Adickes v. Kress & Co.,* 398 U.S. 144 (1970), Mr. Justice Harlan said for the Court that:

> . . . settled practices of state officials may, by imposing sanctions or withholding benefits, transform private predilections into compulsory rules of behavior no less than legislative pronouncements.
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> *Id.* at 168.

Compulsory rules of behavior were found to be the equivalent of legislative command—and to be clearly state action—in *Lombard v. Louisiana,* 373 U.S. 267, 273 (1963), in which nominally private action was held "coerced by the city"; and in *Peterson v. City of Greenville,* 373 U.S. 244 (1963), the Court was unanimous in finding state action in "private" discrimination because the actors "did precisely what the city law required," *id.* at 248. Rejecting out of hand the contention that the store would have discriminated anyway, the Court said:

> When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the dis-

> crimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators.
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> *Ibid.*

Thus the closer to coercion state involvement has been, the clearer state action has been to this Court. Here coercion is simple and obvious: those required to record and report may either do so or go to jail. It would be indeed anomalous if this Court were to find governmental encouragement and joint participation sufficient to apply the Bill of Rights but exonerate the government from involvement in acts it orders to be done on pain of criminal prosecution.

The consequence of the conclusion that banks and others are agents of government when they make or keep records they would not make or keep but for the Act is that the validity of the search and seizure must be measured as of the time of making or copying—not as of the time an employee of government arrives with a warrant, subpoena, summons, or "informal request" to see the records. The recordkeeping requirements of the Act are therefore void under the Fourth Amendment for precisely the same reasons the reporting requirements are void—because the searches and seizures are accomplished without warrant or judicial supervision, are wholly unreasonable in scope, and ignore probable cause and any other standard of materiality or relevancy.

III.

THE FOURTH AMENDMENT'S GUARANTEE OF FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES AND THE FIFTH AMENDMENT'S GUARANTEE OF FREEDOM FROM COMPELLED SELF-INCRIMINATION CONVERGE TO PROHIBIT THE COERCED CREATION, RETENTION, AND DELIVERY TO THE GOVERNMENT OF INCRIMINATING EVIDENCE.

The "historic interests of 'self-protection' jointly protected by the Fourth and Fifth Amendments," *Camara v. Municipal Court,* 387 U.S. 523, 530 (1967), were so central to the drafting of those Amendments that for seventy-five years no Congress attempted by statute to compel from a criminal defendant documents that would aid in his conviction. *Boyd v. United States,* 116 U.S. 616, 622-23 (1886); see Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 43-47, 83-103 (1970 ed.). The Federal Judiciary Act of 1789 limited the authority of federal courts to compel the production of books and writings to instances where the discovery would not "tend to convict the party of a crime or to forfeit his property." *Boyd, supra,* at 631. The first statutes attempting such seizures, enacted in 1863 and 1874, were struck down in *Boyd, supra,* both as compelled self-incrimination and as vehicles of unreasonable searches and seizures. Pursuant to that authority, courts have consistently invalidated searches aimed at coercing incriminating documents from those sought to be incriminated. See, *e.g., Hill v. Philpott,* 445 F.2d 144 (7th Cir. 1971); *VonderAhe v. Howland,* ..... F.2d ..... (9th Cir. No. 71-1982, March 26, 1973).[27]

[27]One of this Court's more notable applications of the rule, *Gouled v. United States,* 255 U.S. 297, 310-11 (1921), has since

In its famous explication of the sense in which the Fourth and Fifth Amendments "run almost into each other," 116 U.S. at 630, the *Boyd* Court said, at pp. 630, 633-35:

> Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other.
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> * * * *
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> We have already noted the intimate relation between the two amendments. They throw great light on each other. For the "unreasonable searches and seizures" condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man "in a criminal case to be a witness against himself," which is condemned in the Fifth Amendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the Fourth Amendment. And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from com-

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been partially overruled. *Warden v. Hayden*, 387 U.S. 294 (1967). But *Warden* leaves intact the *Gouled* ruling insofar as it pertains to evidence by which self-incrimination may be compelled; the *Warden* Court carefully distinguished self-incriminating evidence from the sort of non-testimonial evidence before it (trousers, a jacket and a cap), and declined to reach issues posed by evidence affecting the self-incrimination clause. 387 U.S. at 302-03.

pelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms.

* * * *

. . . [W]e are further of the opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure—and an unreasonable search and seizure—within the meaning of the Fourth Amendment. Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as beforesaid, it contains their substance and essence, and effects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that Constitutional provisions for the security of person and property should be liberally construed.

Appellants do not believe that every transaction required to be reported or recorded by the Act, or even a tiny fraction of those transactions, will evidence criminality. The government apparently does; the legislative history indicates that Congress apparently did. If the government and Congress are right, then the reports that they compel constitute self-incrimination prohibited by the Fifth Amendment.

In *United States v. Sullivan*, 274 U.S. 259 (1927), the Court held that the self-incrimination clause of the Fifth Amendment did not excuse total failure to complete an income tax return. The purpose of the required information in *Sullivan* was essentially noncriminal, and the information was necessary to the fulfillment of that purpose. Much the same was said recently by the majority of this Court in *California v. Byers*, 402 U.S. 422, 431 (1971), when it sustained California's hit-and-run reporting statute because "the statutory purpose is noncriminal and self-reporting is indispensable to its fulfillment."

In *Marchetti v. United States*, 390 U.S. 39 (1968), *Grosso v. United States*, 390 U.S. 62 (1968), *Haynes v. United States*, 390 U.S. 85 (1968), and *Albertson v. SACB*, 382 U.S. 70 (1965), the Court found the self-incrimination clause a bar to the use of evidence obtained, as in *Marchetti*, *Grosso*, and *Haynes*, or to the reporting itself, as in *Albertson*. *California v. Byers*, *supra*, summarizes the factors separating the two lines of cases by saying that those in which the privilege was found applicable involved reporting requirements directed at highly selective groups inherently suspect of criminal activities, and in areas permeated with criminal statutes—not in essentially noncriminal and regulatory areas of inquiry. 402 U.S. at 430.[28]

It was clearly the empirical assumption of Congress that those who engage in the transactions required to

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[28] As *Marchetti*, *Grosso*, and *Haynes* make clear, the "required records" doctrine of *Shapiro v. United States*, 335 U.S. 1 (1948), has no application here. See discussion *supra* at p. 32, n. 16.

be reported and recorded are a highly select and inherently suspect group. See legislative history discussed *supra* at pp. 19-27. The group was intended by Congress to be even more select and suspect through the liberal use of the broad exemptive powers of the Secretary to exclude "legitimate" business entirely from the requirements of the Act. See *supra* at pp. 23-24. The area addressed by Congress, then, is certainly permeated with criminal statutes, and the purpose of the Act can hardly be said to be non-criminal. The required reports and records are, therefore, compelled self-incrimination within the meaning of *Marchetti, Grosso,* and *Haynes,* all *supra.*[20]

Assertions of the privilege against self-incrimination normally await the attempted use of incriminating information against the party from whom it was compelled, see, *e.g., Marchetti, Grosso,* and *Haynes, supra,* or prosecution for refusal to supply the information, see, *e.g., Byers, supra.* Relying on that fact, the government has argued in its consolidated appeal (Jurisdictional Statement at 24) that appellants' self-incrimination claims are not ripe for decision and must await "an action to compel" appellants to report. What form the government thinks that action might take is unclear. But for several reasons appellants believe that this is not a normal case, and that their

[20]Appellants recognize that a telling argument can be made for the proposition that only an infinitesimal amount of the data required to be reported and recorded will actually incriminate anyone. Appellants make that argument themselves. But appellants doubt that the government will make it, for it only underscores the absurd scope of the searches and seizures mandated by the Act; the argument escapes the Fifth Amendment only to retreat into the prohibited areas of the Fourth.

arguments concerning self-incrimination are ripe for decision now. Indeed, if those claims are not adjudicated now they probably never will be.

First, the rule that the assertion of the privilege against self-incrimination must await a criminal prosecution in which the compelled evidence is offered or a prosecution for failure to produce it is not a rigid and unvarying rule; this Court wisely relaxed it, in circumstances very similar to these, in *Albertson v. SACB,* in which the Court said, 382 U.S. at 75-76:

> Specific orders requiring petitioners to register have been issued. The Attorney General has promulgated regulations requiring that registration shall be accomplished on Form IS-52a and that the accompanying registration statement shall be a completed Form IS-52 . . . and petitioners risk very heavy penalties if they fail to register by completing and filing these forms . . each day of failure to register constitutes a separate offense punishable by a fine of up to $10,000 or imprisonment of up to five years, or both. Petitioners must either register without a decision on the merits of their privilege claims, or fail to register and risk onerous and rapidly mounting penalties while awaiting the Government's pleasure whether to initiate a prosecution against them. To ask, in these circumstances, that petitioners await such a prosecution for an adjudication of their self-incrimination claims is, in effect, to contend that they should be denied the protection of the Fifth Amendment privilege intended to relieve claimants of the necessity of making a choice between incriminating themselves and risking serious punishments for refusing to do so.

These appellants are in much the same position. The statute and regulations command them to report, on forms already prescribed for that purpose; they risk extremely serious civil and criminal sanctions for failing to do so; there is no question whether they will be required to report. Compare *Communist Party v. SACB,* 367 U.S. 1 (1961).

Second, the reporting and recordkeeping requirements of the Act, taken together, enable the government to undermine the protections of the Fourth and Fifth Amendments by robbing the subjects of the reports and records of procedural opportunities to assert their rights. Appellant Lieberman, for example, as a person who transports monetary instruments worth more than $5,000 across the border, must report the details of his transactions, 31 U.S.C §1101, 31 C.F.R. §103.23. Appellants Lieberman, Harwood, Bruer, and Durell, as holders of financial interests in foreign bank accounts, must both report those interests, 31 U.S.C. §1121, 31 C.F.R. §103.24, and keep, make and retain records relating to those interests, 31 U.S.C. §1121, 31 C.F.R. §103.32.

Normally, the government could not successfully use the information acquired by the reports to convict appellants of crimes because of the privilege against self-incrimination. Nor could the government obtain the records from appellants, for the purpose of incriminating them, by warrant, subpoena, summons, or any other process. See *Boyd v. United States, Hill v. Philpott,* and *VonderAhe v. Howland,* all *supra.*

Nor could the government successfully convict appellants Stark and Marson, the bank customers, by the use of bank checks in their possession, not only because the checks might have been destroyed in the ordinary course of business, but also because the Fourth Amendment prohibits the compulsory production of such documents from the parties sought to be incriminated.

But none of these prosecutorial inconveniences exists under the Bank Secrecy Act, because third parties—banks and financial institutions, and all other parties to reportable transactions—are required to make and retain copies of the documentation of nearly all of these transactions. The government may, therefore, avoid compelling the information from those it seeks to incriminate by the simple expedient of compelling it from third parties. Under the rules applicable to seeking such information from third parties, the government may successfully overcome most if not all attempts by appellants to resist production and use of the information.

When documents are sought from third parties, the subject of the documents usually has no notice of that fact. No provision for notice is contained in the Act or Regulations. Nor does the third party have any adversary interest in contesting the process. These facts by themselves undermine the procedural protections of the Fourth and Fifth Amendments.

In order to be a "person aggrieved by an unlawful search and seizure" within the meaning of Rule 41(e), Federal Rules of Criminal Procedure, which governs

motions to suppress, the moving party must have been the *victim* of the illegal search; an incriminated defendant may not under federal law suppress the incriminating fruits of the unlawful search of another. See, *e.g., Alderman v. United States,* 394 U.S. 165 (1969); *Jones v. United States,* 362 U.S. 257 (1960).[30]

The possession of the records by the third party[31] also frustrates any potential claim of self-incrimination by appellants, since the government may successfully argue under *Couch v. United States,* ..... U.S. ....., 34 L.Ed.2d 548 (1973), that appellants would have no standing to intervene to protect their Fifth Amendment rights in a summons proceeding. Nor could appellants protect those rights in a subsequent prosecution because the evidence, although compelled, was not compelled *from them.*

This action, therefore, may well be the first and last chance appellants have to protect themselves against self-incrimination because, by coerced record-keeping, the government can compel incriminating evidence from others which would not exist but for the Act. If this Court sustains the Bank Secrecy Act, it will rarely see another warrant, subpoena or summons directed to a criminal suspect in a case involving

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[30]The same result would obtain in the Act's secondary civil application. See, *e.g., Donaldson v. United States,* 400 U.S. 517 (1971), finding that a taxpayer lacked standing to intervene in a proceeding on a summons issued for records in the possession of his former employer and the latter's accountant.

[31]It defies all logic to regard these records as "business records" in the ordinary sense of the term, since they are not needed or wanted by the business and but for the Act would not be made or kept.

financial dealings; it will become standard practice for the Justice Department (and the Internal Revenue Service and other regulatory agencies) to seek financial information from the unwilling third parties who are forced by the Act to be the biographers of the financial lives of others.

Finally, the security of one's papers and the privilege against self-incrimination are substantially undermined by the Bank Secrecy Act because it introduces a new element into American law—the anticipatory, coerced creation of documentary evidence of crime. This Court is familiar with fishing expeditions for evidence of crime, but it has not yet faced a governmental attempt to stock the pond.

Subject only to a few well-established exceptions, each person retains the right to decide whether to create a paper and whether to retain it. Recordkeeping and retention may be required by specific statutes and regulations serving a specific regulatory scheme,[32] but that is not the case here. Documents already in existence may be required to be retained pursuant to specific statutes prohibiting the destruction of evidence,[33] but that is not the case here because (1) only a tiny fraction of the records required will ever be evidence of anything, and (2) it is impossible to conceptualize the "destruction of evidence" useful in a proceeding not yet conceived by anyone. Short of such

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[32]See, *e.g.*, 26 U.S.C. §6001, which authorizes the Secretary to require the making and retention of such records as he "deems sufficient to show whether or not such person is liable for tax under this title."

[33]See, *e.g.*, 18 U.S.C. §2232, authorizing criminal punishment for the destruction of property to prevent its seizure.

specific statutory restrictions, however, a person may choose not to create or retain a document at his will.

That freedom—that choice—is abolished by the Bank Secrecy Act, which, for the first time in American law, coerces citizens into creating, retaining, and transmitting to the government information intended to incriminate themselves and others. We submit that no person is "secure" in his "papers" when he is forced to create papers for the purpose of incriminating himself or others, and that no person is protected against self-incrimination when he is forced to report and record documentary facts that may send him to jail—documentary facts that would otherwise not exist.

This Court should forthrightly rule that the combined protections of the Fourth and Fifth Amendments prohibit government from forcing its citizens to create evidence for use against themselves and their fellow citizens. It may be that " 'the public . . . has a right to every man's evidence' " *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972), if he *has* it, but it is a long and dangerous step from there to the notion that the public has a right to force every man to *create* it.

IV.

THE RECORDKEEPING AND REPORTING PROVISIONS OF THE ACT AND REGULATIONS VIOLATE THE APPELLANT ACLU'S RIGHTS, AND ITS MEMBERS' RIGHTS, TO FREE SPEECH, FREE ASSOCIATION, PETITION FOR REDRESS OF GRIEVANCES, AND ANONYMITY GUARANTEED BY THE FIRST AMENDMENT.

The appellant American Civil Liberties Union of Northern California, Inc., pleaded and proved without contradiction in the District Court that it is a non-profit membership corporation regarded by many as controversial, that it receives dues largely in the form of checks from all over America and from foreign countries, and that it and its members desire, because of historical retaliation[34] and fear of future retaliation, to maintain the identities of its members and contributors in strict confidence (App. 33-34; 52-53; 64, 68-69.

The long and distinguished line of decisions of this Court upholding against governmental intrusion the anonymity of members of and contributors to controversial associations is well known and well settled, and needs no extended discussion here. See *Lamont v. Postmaster General,* 381 U.S. 301 (1965); *Gibson v. Florida Legislative Investigations Comm.,* 372 U.S. 539 (1963); *Louisiana ex rel. Gremillion v. NAACP,* 366 U.S. 293 (1961); *Shelton v. Tucker,* 364 U.S. 479 (1960); *Bates v. Little Rock,* 361 U.S. 516 (1960); *NAACP v. Alabama,* 357 U.S. 449 (1958); *United States v. Rumley,* 345 U.S. 41 (1953).

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[34]See, *e.g., Shelton v. Tucker, supra,* at 486 n. 7, in which members of the ACLU were among the targets of retaliation from those seeking their identities.

The technique of examining bank accounts for law enforcement purposes is neither novel nor rare. See, *e.g., Brex v. Smith, supra.* An example particularly telling here is *Pollard v. Roberts,* 283 F.Supp. 248 (E.D.Ark. 1968), *aff'd per curiam,* 393 U.S. 14, in which a District Attorney subpoenaed the records of a checking account maintained by the Arkansas Republican Party. A three-judge District Court (consisting of then Circuit Judge Blackmun, Judge Henley and Judge Harris) unanimously enjoined enforcement of the subpoenas, holding that the disclosure of membership that the investigation would entail would jeopardize the group's members and violate the First Amendment right to associational privacy. See 283 F.Supp. at 251-52, 257, 258.

A most recent example is *United States Servicemen's Fund v. Eastland,* and related cases, Numbers 71-2034, 71-1609, 71-1693, and 71-1717, decided on August 30, 1973, by the District of Columbia Circuit. In those cases the Senate Committee on Internal Security had subpoenaed the bank records of the United States Servicemen's Fund, the Progressive Labor Party, the National Peace Action Coalition, and the People's Coalition for Peace and Justice. The Court of Appeal reversed the dismissal of a complaint seeking declaratory and injunctive relief against the release of the records, holding that the plaintiffs had adequately pleaded and proved intrusion into the anonymity of their members and contributors and the consequent loss of revenue, members and confidence that resulted. While recognizing that ordinarily equitable relief would be unavailable against the subpoe-

nas, the Court of Appeal held it available in the special circumstances of a subpoena directed to a disinterested third party. Noting, Slip Opinion at 17 n.3, that the appellants based "their entire right to equitable intervention of the district court on the *fact that the subpoena was served on a disinterested third party* who cannot be expected to test out the legality of the subpoena . . ." (emphasis in original), the Court distinguished its earlier cases and held equitable relief appropriate because:

> *Here the plaintiffs have no alternative means to vindicate their rights.* They cannot contest a subpoena issued on the Chemical Bank before the Committee or before the Senate, and they cannot force the bank's uninvolved officials to run the risk of contempt citations and criminal trials to aid the plaintiffs in establishing their First Amendment rights.
>
> Slip Op. 15 (emphasis in original).

Save for the fact that no summons or subpoena has yet issued for the accounts of the appellant ACLU—to its knowledge—the appellant is in precisely the same position as the organizations granted relief in *United States Servicemen's Fund.* It cannot contest a subpoena directed to its bank, and cannot force its bank's uninvolved officials to run the risk of contempt citations and criminal trials to aid it in protecting the anonymity of its members.

The fact that a subpoena has not yet issued should not be determinative. First, the appellant will have no way of knowing about the issuance of a subpoena; no law compels its bank to inform it, and this Court

may judicially know that it is frequent practice for banks to comply with such subpoenas or summons immediately, without resistance, and without notifying its customer. Second, even without a subpoena, the recordkeeping requirements of the Act amount to the making of a membership list of the appellant—one available not only through process but also under the regrettably widespread practice that permits informal access—i.e., without process—by law enforcement officials to bank records.[35] Thus the records of membership in and contribution to appellant ACLU are not only vulnerable to future process, they are vulnerable both to present process unknown to it and informal access unknown to it. The controversy is thus ripe for adjudication, and appellant ACLU's bank accounts deserving of this Court's protection under the First Amendment.

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[35]The day-to-day practice of permitting "informal" access to bank records is, unfortunately, widespread, notwithstanding the fact that most banks formally prohibit it. *American Banker*, May 12, 1972, p. 1, cols. 3-4. It has been reported that the identity of Daniel Ellsberg's psychiatrist was first learned by means of the examination of Ellsberg's bank checks—an examination that, according to a pending indictment in the Superior Court in Los Angeles, led to the subsequent burglary of the psychiatrist's office by former high government officials. *New York Times*, pp. 1, 21, cols. 7-8. This Court may judicially notice the contents of affidavits on file in *American Civil Liberties Union, et al. v. Shultz, et el.*, No. 1330-72, now pending in the United States District Court for the District of Columbia. Those affidavits indicate frequent extralegal examination of bank records for unlawful political purposes.

CONCLUSION

Mr. Justice Jackson, dissenting in *Shapiro v. United States,* 335 U.S. 1, 71 (1948), foresaw legislation like the Bank Secrecy Act:

> It would, no doubt, simplify enforcement of all criminal laws if each citizen were required to keep a diary that would show where he was at all times, with whom he was, and what he was up to. The decision of today . . . invites and facilitates that eventuality.

Mr. Justice Jackson did not foresee the possibility that one day we would be required not only to keep diaries of our own activities, but also to keep biographies of the activities of others, in order to "simplify enforcement of all criminal laws." The Bank Secrecy Act realizes a major part of this nightmare.

This Court recently said, in *Almeida-Sanchez v. United States,* ___ U.S. ___, 37 L.Ed.2d 596, 603 (1973):

> The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards.

The Bank Secrecy Act does not even pay lip service to constitutional safeguards. Its goal is mass, anticipatory incrimination; its method is mass, indiscriminate search and seizure. Both goal and method are

repugnant to the Constitution; appellants ask that they be invalidated by this Court.

November 22, 1973.

Respectfully submitted,

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(Appendices A and B Follow)

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Appendix A

12 U.S.C. § 1829b.

§ 1829b. *Retention of records by insured banks—Congressional findings and declaration of purpose*

(a)(1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal tax, or regulatory investigations or proceedings.

Rules and Regulations

(b) Where the Secretary of the Treasury (referred to in this section as the "Secretary") determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

Identity of persons having accounts and persons authorized to act with respect to such accounts; exemptions

(c) Each insured bank shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

Reproduction of checks, drafts, and other instruments; records of transactions; identity of party

(d) Each insured bank shall make, to the extent that the regulations of the Secretary so require—

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c) of this section.

Identity of persons making transactions reportable under the Currency and Foreign Transactions Reporting Act

(e) Whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured bank which is required to be reported or recorded under the Currency and Foreign Transactions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

Additions to or substitutes for required records

(f) In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

Retention period

(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

Report to Congress by Secretary of the Treasury

(h) The Secretary shall include in his annual report to the Congress information on his implementa-

tion of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

Sept. 21, 1950, c. 967, § 2[21], as added Oct. 26, 1970, Pub.L. 91-508, Title I, § 101, 84 Stat. 1114.

U.S.C. § 1951-1959.

§ 1951. *Congressional findings and declaration of purpose*

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 1953(b) of this title have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 1952 of this title may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Pub.L. 91-508, Title I, § 121, Oct. 26, 1970, 84 Stat. 1116.

§ 1952. *Reports on ownership and control*

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured

institutions of any type with respect to their ownership, control, and managements and any changes therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such reports as he determines in respect of such ownership, control, and managements and changes therein.

Pub.L. 91-508, Title I, § 122, Oct. 26, 1970, 84 Stat. 1116.

§ 1953. *Recordkeeping and Procedures*

(a) Where the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b) of this section, any records or evidence of any type which the Secretary is authorized under section 1829b of this title to require insured banks to require, retain or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under

this paragraph occurs with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

(b) The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

(1) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments, except as an incident to the conduct of its own nonfinancial business.

(2) Transferring funds or credits domestically or internationally.

(3) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

(4) Operating a credit card system.

(5) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations.

Pub.L. 91-508, Title I, § 123, Oct. 26, 1970, 84 Stat. 1116.

§ 1954. *Injunctions*

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or

practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

Pub.L. 91-508, Title I, § 124, Oct. 26, 1970, 84 Stat. 1117.

§ 1955. *Civil penalties*

(a) For each willful violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

Pub.L. 91-508, Title I, § 125, Oct. 26, 1970, 84 Stat. 1117.

§ 1956. *Criminal penalty*

Whoever willfully violates any regulation under this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Pub.L. 91-508, Title I, § 126, Oct. 26, 1970, 84 Stat. 1118.

§ 1957. *Additional criminal penalty in certain cases*

Whoever willfully violates any regulation under this chapter, section 1829b of this title, or section 1730d of this title, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Pub.L. 91-508, Title I, § 127, Oct. 26, 1970, 84 Stat. 1118.

§ 1958. *Compliance*

The Secretary shall have the responsibility to assure compliance with the requirements of this chapter and sections 1730d and 1829b of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

Pub.L. 91-508, Title I, § 128, Oct. 26, 1970, 84 Stat. 1118.

§ 1959. *Administrative procedure*

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of Title 5 shall apply to all proceedings under this chapter, section 1829b of this title, and section 1730d of this title.

Pub.L. 91-508, Title I, § 129, Oct. 26, 1970, 84 Stat. 1118.

§ 1051. *Congressional declaration of purpose*

It is the purpose of this chapter to require certain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Pub.L. 91-508, Title II, § 202, Oct. 26, 1970, 84 Stat. 1118.

§ 1052. *Definitions and rules of construction*

(a) The definitions and rules of construction set forth in this section apply for the purposes of this chapter.

(b) The term "Secretary" means the Secretary of the Treasury.

(c) The term "person" includes natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities. The term also includes any governmental department or agency specified by the Secretary either for the purpose of this chapter generally or any particular requirement thereunder.

(d) The term "United States", used in a geographical sense, includes the States and the District of Columbia, and to the extent the Secretary shall by regulation specify, either for the purposes of this chapter generally or any particular requirement thereunder, the Commonwealth of Puerto Rico, the possessions of the United States, United States military establishments, and United States diplomatic establishments.

(e) The term "financial institution" means any person which does business in any one or more of the following capacities:

(1) an insured bank as defined in section 1813 of Title 12;

(2) a commercial bank or trust company;

(3) a private banker;

(4) an agency or a branch within the United States of any foreign bank;

(5) an insured institution as defined in section 1724 of Title 12;

(6) a savings bank, building and loan association, credit union, industrial bank, or other thrift institution;

(7) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(8) a broker or dealer in securities or commodities;

(9) an investment banker or investment company;

(10) a currency exchange;

(11) an issuer, redeemer or cashier of travelers' checks, checks, money orders, or similar instruments;

(12) an operator of a credit card system;

(13) an insurance company;

(14) a dealer in precious metals, stones, or jewels;

(15) a pawnbroker;

(16) a loan or finance company;

(17) a travel agency;

(18) a licensed transmitter of funds;

(19) a telegraph company;

(20) a Federal, State, or local government institution which performs any of the functions of any of the businesses listed above; or

(21) any other type of business or institution performing similar, related, or substitute functions specified by the Secretary by regulation for the purposes of the provision of this chapter to which the regulation relates.

(f) The term "domestic", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions within the United States.

(g) The term "financial agency" means any person which acts in the capacity of a financial institution or in the capacity of a bailee, depository trustee, agent, or in any other similar capacity with respect to money, credit, securities, or gold or transactions therein, on behalf of any person other than a government, a monetary or financial authority when acting as such, or an international financial institution of which the United States is a member.

(h) The term "foreign", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions outside the United States.

(i) References to this chapter or any provision thereof include regulations issued under this chapter or the provision thereof in question.

(j) All reports required under this chapter and all records of any such reports are specifically exempted from disclosure under section 552 of Title 5.

(k) For the purposes of section 1001 of Title 18 the contents of reports required under any provision of this chapter are statements and representations in matters within the jurisdiction of an agency of the United States.

(l) The term "monetary instruments" means coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify for the purposes of the provision of this chapter to which the regulation relates.

Pub.L. 91-508, Title II, § 203, Oct. 26, 1970, 84 Stat. 1118.

§ 1053. *Regulations*

The Secretary shall prescribe such regulations as he may deem appropriate to carry out the purposes of this chapter.

Pub.L. 91-508, Title II, § 204, Oct. 26, 1970, 84 Stat. 1120.

§ 1054. *Compliance*

(a) The Secretary shall have the responsibility to assure compliance with the requirements of this chapter and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

(b) The Secretary may by regulation require any class of domestic financial institutions to maintain such procedures as he may deem appropriate to assure compliance with the provisions of this chapter. For the purposes of both civil and criminal penalties for violations of this section, a separate violation shall be deemed to occur with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

Pub.L. 91-508, Title II, § 205, Oct. 26, 1970, 84 Stat. 1120.

§ 1055. *Exemptions*

The Secretary may make such exemptions from any requirement otherwise imposed under this chapter as he may deem appropriate. Any such exemption may be conditional or unconditional, by regulation, order, or licensing, or any combination thereof, and may relate to any particular transaction, to the type or amount of the transaction, to the party or parties or the classification of parties, or to any combination thereof. The Secretary may in his discretion, in any manner giving actual or constructive notice to the

parties affected, revoke any exemption made under this section. Any such revocation shall remain in effect pending any judicial review.

Pub.L. 91-508, Title II, § 206, Oct. 26, 1970, 84 Stat. 1120.

§ 1056. *Civil penalty*

(a) For each willful violation of this chapter, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this chapter, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

Pub.L. 91-508, Title II, § 207, Oct. 26, 1970, 84 Stat. 1120.

§ 1057. *Injunctions*

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of the provisions of this chapter, or of any order thereunder, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper

showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with the provisions of this chapter or any order of the Secretary made in pursuance thereof.

Pub.L. 91-508, Title II, § 208, Oct. 26, 1970, 84 Stat. 1120.

§ 1058. *Criminal penalty*

Whoever willfully violates any provision of this chapter or any regulation under this chapter shall be fined not more than $1,000, or imprisoned not more than one year, or both.

Pub.L. 91-508, Title II, § 209, Oct. 26, 1970, 84 Stat. 1121.

§ 1059. *Additional criminal penalty in certain cases*

Whoever willfully violates any provision of this chapter where the violation is—

(1) committed in furtherance of the commission of any other violation of Federal law, or

(2) committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any twelve-month period,

shall be fined not more than $500,000 or imprisoned not more than five years, or both.

Pub.L. 91-508, Title II, § 210, Oct. 26, 1970, 84 Stat. 1121.

§ 1060. *Immunity of witnesses*

Whenever a witness refuses on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding involving any violation of this chapter before or ancillary to—

(1) a court or grand jury of the United States

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order requiring him to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. No such testimony or other information so compelled under the order or evidence or other information which is obtained by the exploitation of such testimony may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Pub.L. 91-508, Title II, § 211, Oct. 26, 1970, 84 Stat. 1121.

§1061. *Availability of information to other Federal agencies*

The Secretary shall, upon such conditions and pursuant to such procedures as he may by regulation prescribe, make any information set forth in reports filed pursuant to this chapter available for a purpose consistent with the provisions of this chapter to any

other department or agency of the Federal Government on the request of the head of such department or agency.

Pub.L. 91-508, Title II, § 212, Oct. 26, 1970, 84 Stat. 1121.

§ 1062. *Administrative procedure*

Subject to section 1052(j) of this title, the administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of Title 5, shall apply to all proceedings under this chapter.

Pub.L. 91-508, Title II, § 213, Oct. 26, 1970, 84 Stat. 1121.

Subchapter II.—Domestic Currency Transactions

§ 1081. *Reports*

Transactions involving any domestic financial institution shall be reported to the Secretary at such time, in such manner, and in such detail as the Secretary may require if they involve the payment, receipt, or transfer of United States currency, or such other monetary instruments as the Secretary may specify, in such amounts, denominations, or both, or under such circumstances, as the Secretary shall by regulation prescribe.

Pub.L. 91-508, Title II, § 221, Oct. 26, 1970, 84 Stat. 1122.

§ 1082. *Persons required to file reports*

The report of any transaction required to be reported under this subchapter shall be signed or other-

wise made both by the domestic financial institution involved and by one or more of the other parties thereto or participants therein, as the Secretary may require. If any party to or participant in the transaction is not an individual acting only for himself, the report shall identify the person or persons on whose behalf the transaction is entered into, and shall be made by the individuals acting as agents or bailees with respect thereto.

Pub.L. 91-508, Title II, § 222, Oct. 26, 1970, 84 Stat. 1122.

§ 1083. *Reporting procedure*

(a) The Secretary may in his discretion designate domestic financial institutions, individually or by class, as agents of the United States to receive reports required under this subchapter, except that an institution which is not insured, chartered, examined, or registered as such by any agency of the United States may not be so designated without its consent. The Secretary may suspend or revoke any such designation for any violation of this chapter, or section 1730d or 1829b of Title 12.

(b) Any person (other than an institution designated under subsection (a) of this section) required to file a report under this subchapter with respect to a transaction with a domestic financial institution shall file the report with that institution, except that (1) if the institution is not designated under subsection (a) of this section, the report shall be filed as the Secretary shall prescribe, and (2) any such person

may, at his election and in lieu of filing the report in the manner hereinabove prescribed, file the report with the Secretary. Domestic financial institutions designated under subsection (a) of this section shall transmit reports filed with them, and shall file their own reports, as the Secretary shall prescribe.

Pub.L. 91-508, Title II, § 223, Oct. 26, 1970, 84 Stat. 1122.

Subchapter III.—Reports of Exports and Imports of Monetary Instruments

§ 1101. *Reports—Persons required to file*

(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—

(1) transports or causes to be transported monetary instruments—

(A) from any place with the United States to or through any place outside the United States, or

(B) to any place within the United States from or through any place outside the United States, or

(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States

in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.

Contents of filed reports

(b) Reports required under this section shall be filed at such times and places, and may contain such of the following information and any additional information, in such form and in such detail, as the Secretary may require:

(1) The legal capacity in which the person filing the report is acting with respect to the monetary instruments transported.

(2) The origin, destination, and route of the transportation.

(3) Where the monetary instruments are not legally and beneficially owned by the person transporting the same, or are transported for any purpose other than the use in his own behalf of the person transporting the same, the identities of the person from whom the monetary instruments are received, or to whom they are to be delivered, or both.

(4) The amounts and types of monetary instruments transported.

Common carriers

(c) Subsection (a) of this section does not apply to any common carrier of passengers in respect of monetary instruments in the possession of its passengers, nor to any common carrier of goods in respect of shipments of monetary instruments not declared to be such by the shipper.

Pub.L. 91-508, Title II, § 231, Oct. 26, 1970, 84 Stat. 1122.

§ 1102. *Forfeiture*

(a) Any monetary instruments which are in the process of any transportation with respect to which any report required to be filed under section 1101(a) of this title either has not been filed or contains material omissions or misstatements are subject to seizure and forfeiture to the United States.

(b) For the purpose of this section, monetary instruments transported by mail, by any common carrier, or by any messenger or bailee, are in process of transportation from the time they are delivered into the possession of the postal service, common carrier, messenger, or bailee until the time they are delivered into or retained in the possession of the addressee or intended recipient or any agent of the addressee or intended recipient for purposes other than further transportation within, or across any border of, the United States.

Pub.L. 91-508, Title II, § 232, Oct. 26, 1970, 84 Stat. 1123.

§ 1103. *Civil liability*

The Secretary may assess a civil penalty upon any person who fails to file any report required under section 1101 of this title, or who files such a report containing any material omission or misstatement. The amount of the penalty shall not exceed the amount of the monetary instruments with respect to whose transportation the report was required to be filed. The liabilities imposed by this subchapter are in addition to any other liabilities, civil or criminal, except that

the liability under this section shall be reduced by any amount actually forfeited under section 1102 of this title.

Pub.L. 91-508, Title II, § 233, Oct. 26, 1970, 84 Stat. 1123.

§ 1104. *Remission of forfeiture or penalty*

The Secretary may in his discretion remit any forfeiture or penalty under this subchapter in whole or in part upon such terms and conditions as he deems reasonable and just.

Pub.L. 91-508, Title II, § 234, Oct. 26, 1970, 84 Stat. 1123.

§ 1105. *Enforcement authority*

(a) If the Secretary has reason to believe that monetary instruments are in the process of transportation and with respect to which a report required under section 1101 of this title has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles.

Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law.
Pub.L. 91-508, Title II, § 235, Oct. 26, 1970, 84 Stat. 1123.

§ 1121. *Records and reports*

(a) The Secretary of the Treasury, having due regard for the need to avoid impeding or controlling the export or import of currency or other monetary instruments and having due regard also for the need to avoid burdening unreasonably persons who legitimately engage in transactions with foreign financial agencies, shall by regulation require any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

(1) The identities and addresses of the parties to the transaction or relationship.

(2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.

(3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

(b) No person required to maintain records under this section shall be required to produce or otherwise disclose the contents of the records except in compliance with a subpoena or summons duly authorized and issued or as may otherwise be required by law.

Pub.L. 91-508, Title II, § 241, Oct. 26, 1970, 84 Stat. 1124.

§1122. *Classifications and requirements*

The Secretary may prescribe:

(1) Any reasonable classification of persons subject to or exempt from any requirement imposed under section 1121 of this title.

(2) The foreign country or countries as to which any requirement imposed under section 1121 of this title applies or does not apply if, in the judgment of the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.

(3) The magnitude of transactions subject to any requirement imposed under section 1121 of this title.

(4) Types of transactions subject to or exempt from any requirement imposed under section 1121 of this title.

(5) Such other matters as he may deem necessary to the application of this subchapter.

Pub.L. 91-508, Title II, § 242, Oct. 26, 1970, 84 Stat. 1124.

Appendix B

31 C.F.R. § 103

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury

Subpart A—Definitions

§ 103.11 *Meaning of Terms*

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

Bank. (a) Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below.

(1) a commercial bank or trust company organized under the laws of any state or of the United States;

(2) a private bank;

(3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;

(4) an insured institution as defined in section 401 of the National Housing Act;

(5) a savings bank, industrial bank or other thrift institution;

(6) a credit union organized under the laws of any state or of the United States; and

(7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

(b) Each agent, agency, branch or office within the United States of a foreign bank.

Broker or dealer in securities. A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Currency. The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Domestic. When used herein, refers to the doing of business within the United States, and limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions within the United States.

Financial institution. Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) a bank;

(2) a broker or dealer in securities;

(3) a person who engages as a business in dealing in or exchanging currency as, for example, a dealer

in foreign exchange or a person engaged primarily in the cashing of checks;

(4) a person who engages as a business in the issuing, selling or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively or as an incidental part of another business;

(5) an operator of a credit card system which issues, or authorizes the issuance of, credit cards that may be used for the acquisition of monetary instruments, goods, or services outside the United States;

(6) a licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

Foreign bank. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Investment security. An instrument which

(1) is issued in bearer or registered form;

(2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary instruments. Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or otherwise in such form that title thereto passes upon delivery. The term does not include bank checks made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

Secretary. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

Transaction in currency. A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

United States. The various States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Subpart B—Reports Required to Be Made

§ 103.21 *Determination by the Secretary*

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 103.22. *Reports of Currency Transactions*

Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000.

Except as otherwise directed in writing by the Secretary, this section shall not (1) require reports of transactions with Federal Reserve Banks or Federal Home Loan Banks; (2) require reports of transactions solely with, or originated by, financial institutions or foreign banks; or (3) require a bank to report transactions with an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned. A report listing such customers who engage in transactions which are not reported because of the exemption contained in this paragraph shall be made to the Secretary upon demand therefor made by him.

§ 103.23 *Report of Transportation of Currency or Monetary Instruments*

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures or requests it to be done by a financial institution or any other person. A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section.

(b) Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under subsection (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by (1) a federal reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities, in respect to currency

or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (4) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (5) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (6) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, nor by (7) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign banks.

(d) This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by subparagraphs (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

§ 103.24 *Reports of Foreign Financial Accounts*

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a United States person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship as required on his federal income tax return for each year in which such relationship exists, and shall provide such information concerning each such account as shall be specified in a special tax form to be filed by such persons.

§ 103.25 *Filing of Reports*

(a) Reports required to be filed by the first paragraph of Section 103.22 shall be filed on or before the forty-fifth day following that on which the reported transactions occur. They shall be filed with the Commissioner of Internal Revenue on forms to be prescribed by him, with the approval of the Secretary. All information called for in such forms shall be furnished.

(b) Reports required to be filed by Section 103.23 (a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise directed or permitted by the Commissioner of Customs. They shall be filed with the Customs officer in charge at any Customs port of entry or departure, or as otherwise permitted or directed by the Commissioner of Customs. If the currency or other monetary instruments with respect to which a report is required do not

accompany a person entering or departing from the United States, such reports may be filed by mail on or before the date of entry, departure, mailing or shipping, with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D. C. 20226. They shall be on forms to be prescribed by the Secretary and all information called for in such forms shall be furnished.

(c) Reports required to be filed by Section 103.23 (b) shall be filed with the Commissioner of Customs within thirty days after receipt of the currency or other monetary instruments. They may be filed with the Customs officer in charge at any port of entry or departure, or by mail addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D. C. 20226. They shall be on forms to be prescribed by the Secretary and all information called for in such forms shall be furnished.

(d) Forms to be used in making the reports required by Sections 103.22 and 103.23 may be obtained from any Internal Revenue office; in addition, forms to be used in making the reports required by Section 103.23 may be obtained from any office of the Bureau of Customs.

§ 103.26 *Identification Required*

Before effecting any transaction with respect to which a report is required under the first paragraph of Section 103.22, a financial institution shall verify and record the identity, and record the account number on its books or the social security or taxpayer

identification number, if any, of a person with whom or for whose account such transaction is to be effected. Verification of identity for a customer of the financial institution depositing or withdrawing funds may be by reference to his account or other number on the books of the institution. Verification of identity in any other case may be by examination, for example, of a driver's license, passport, alien identification card, or other appropriate document normally acceptable as a means of identification.

Subpart C—Records Required to be Maintained

§ 103.31 *Determination by the Secretary*

The Secretary hereby determines that the records required to be kept by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 103.32 *Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts*

Records of accounts required by Section 103.24 to be reported on a federal income tax return shall be retained by each person having a financial interest in any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of five years and shall be kept

at all times available for inspection as authorized by law. In the computation of the period of five years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent federal income tax return or failing to file a federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 103.33 *Records to be Made and Retained by Financial Institutions*

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) a record of each extension of credit in an amount in excess of $5,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature of purpose thereof, and the date thereof;

(b) a record of each advice, request, or instruction received regarding a transaction which results in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States;

(c) a record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regard-

ing a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

§ 103.34 *Additional Records to be Made and Retained by Banks*

(a) With respect to each deposit or share account opened with a bank after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, such bank shall secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such bank shall secure and maintain a record of the social security number of an individual having a financial interest in that account.

(b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks

per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on governmental agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item other than bank charges or periodic charges made pursuant to agreement with the customer, comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted under subparagraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank, purchased, received for credit or collection, or otherwise acquired by the bank;

(8) Each item, including checks, drafts, or transfers of credit, of more than $10,000 received directly

and not through a domestic financial institution, by letter, cable or any other means, from a person, account or place outside the United States;

(9) A record of each receipt of currency, other monetary instruments, checks, or investment securities, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a person, account or place outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and to trace a check deposited in such account through its domestic processing system or to supply a description of a deposited check. This subsection shall be applicable only with respect to demand deposits.

§ 103.35 *Additional Records to be Made and Retained by Brokers and Dealers in Securities*

(a) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in section 240.17a-3 (a)(1), (2), (3), (5), (6), (7), (8) and (9) of Title 17, Code of Federal Regulations;

(3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

§ 103.36 *Nature of Records and Retention Period*

(a) Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains

only standardized printed information, a copy of which is on file.

(b) Records required by this subpart to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.

(c) Records which are required by Section 103.34 (b)(10) to be retained by banks shall be retained for a period of two years. All other records which are required by this subpart to be retained by financial institutions shall be retained for a period of five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

§ 103.37 *Person Outside the United States*

For the purposes of this subpart, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a

transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately fifty miles of the location of the institution, or who is known to be temporarily outside the United States.

Subpart D—General Provisions

§ 103.41 *Dollars as Including Foreign Currency*

Wherever in this part an amount is stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

§ 103.42. *Photographic or Other Reproductions of Government Obligations*

Nothing herein contained shall require or authorize the microfilming or other reproduction of

(1) currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(2) any obligation or other security of any foreign government,

the reproduction of which is prohibited by law.

§ 103.43 *Availability of Information*

The Secretary may make any information set forth in any reports received pursuant to this part available to any other department or agency of the United States upon the request of the head of such department or agency, made in writing and stating the particular information desired, the criminal, tax, or

regulatory investigation or proceeding in connection with which the information is sought, and the official need therefor.

§ 103.44 *Disclosure*

All reports required under this part and all records of such reports are specifically exempted from disclosure under section 552 of Title 5, United States Code.

§ 103.45 *Exceptions, Exemptions, Modifications, and Reports*

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to, grant exemptions from, impose additional recordkeeping or reporting requirements authorized by statute, or otherwise modify, the requirements of this part. Such exceptions, exemptions, requirements or modifications may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order or authorization, and they shall be revocable to the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

§ 103.46 *Enforcement*

(a) Responsibility for assuring compliance with the requirements of this part is delegated as follows:

(1) to the Comptroller of the Currency, with respect to national banks and banks in the District of Columbia;

(2) to the Board of Governors of the Federal Reserve System, with respect to state bank members of the Federal Reserve System;

(3) to the Federal Home Loan Bank Board, with respect to insured building and loan associations, insured savings and loan associations, and insured institutions as defined in section 401 of the National Housing Act;

(4) to the Administrator of the National Credit Union Administration, with respect to federal credit unions;

(5) to the Federal Deposit Insurance Corporation, with respect to all other banks except agents of foreign banks which agents are not supervised by state or federal bank supervisory authorities;

(6) to the Securities and Exchange Commission, with respect to brokers and dealers in securities;

(7) to the Commissioner of Customs with respect to § 103.23 and § 103.48.

(8) to the Commissioner of Internal Revenue except as otherwise specified in this section.

(b) Over-all responsibility for coordinating the procedures and efforts of the agencies listed herein and assuring compliance with this part, is delegated to the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations). Periodic reports

shall be made by each such agency to the Assistant Secretary, with copies to the General Counsel of the Treasury Department and to the Commissioner of Internal Revenue.

§ 103.47 *Civil Penalty*

(a) For any willful violation of any requirement of this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) For any failure to file a report required under Section 103.23 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under Section 103.48.

§ 103.48 *Forfeiture of Currency or Monetary Instruments*

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under Section 103.23 are subject to seizure and forfeiture to the United States if such report has not been filed as required in Section 103.25, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

§ 103.49 *Criminal Penalty*

(a) Any person who willfully violates any provision of this part may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than one year, or both. Such person may in addition, if the violation is of any provision authorized by Title I of Public Law 91-508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, be fined not more than $10,000 or be imprisoned not more than five years, or both.

(b) Any person who willfully violates any provision of Title II of Public Law 91-508, or of this part authorized thereby, where the violation is either

(1) committed in furtherance of the commission of any other violation of Federal law, or

(2) committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any twelve-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than five years, or both.

(c) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this part may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

§ 103.50 *Enforcement Authority with respect to Transportation of Currency or Monetary Instruments*

(a) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under Section 103.23 of this part has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more dsignated or described places, or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law or regulation.

§ 103.51 *Effective Date*

This part shall become effective July 1, 1972.